

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Southern Division

In re:)	Bankr. No. 97-40030
)	
DOUGLAS A. GROVENBURG)	Chapter 13
Soc. Sec. No. 503-588-0845)	
and)	
KATHY A. GROVENBURG)	
Soc. Sec. No. 503-68-8479)	
Debtors.)	
)	
DOUGLAS A. GROVENBURG)	Adv. No. 97-4021
KATHY A. GROVENBURG and)	
MINOR UNNAMED CHILDREN)	MEMORANDUM OF DECISION RE:
Plaintiffs,)	HOMESTEAD INSURANCE COMPANY'S
-vs-)	MOTION TO EXTEND TIME
HOMESTEAD INSURANCE COMPANY)	TO FILE OBJECTIONS
and)	
NORTH STAR MUTUAL INSURANCE)	
COMPANY)	
Defendants.)	

The matter before the Court is the MOTION TO EXTEND TIME TO FILE OBJECTIONS TO FINDINGS AND CONCLUSIONS filed by Homestead Insurance Company and the responses thereto. This is a core proceeding under 28 U.S.C. § 157(b). This MEMORANDUM OF DECISION and accompanying ORDER shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the MOTION shall be granted to the extent that Homestead Insurance Company may file objections that do not exceed the specifications of F.R.Bankr.P. 9033(b).

I.

This Court entered and served its PROPOSED FINDINGS AND CONCLUSIONS RE: CROSS MOTIONS FOR SUMMARY JUDGMENT REGARDING DUTY OF INSURER TO DEFEND on August 29, 1997. The closing stated the PROPOSED FINDINGS AND CONCLUSIONS would be submitted to the District Court "for consideration and entry of a final order and judgment pursuant to

28 U.S.C. § 157(c)(1) and F.R.Bankr.P. 9033(d) after parties in interest timely file any specific objections and responses pursuant to F.R.Bankr.P. 9033(b)."

Under F.R.Bankr.P. 9033(b), parties in interest had ten days after being served with the PROPOSED FINDINGS AND CONCLUSIONS to file "written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection." In compliance with F.R.Bankr.P. 9006(a), the tenth day following service was September 8, 1997. No objections to the PROPOSED FINDINGS AND CONCLUSIONS were filed before or on that date. By letter dated and entered September 16, 1997, the PROPOSED FINDINGS AND CONCLUSIONS were forwarded to the District Court. Later that day, Homestead Insurance Company (Homestead) filed a lengthy RESPONSE with the Bankruptcy Court that constituted its objections under Rule 9033(b).

After consultation with the District Court and in compliance with F.R.Bankr.P. 9033(c), this Court entered an order on September 19, 1997 advising Homestead to file a motion to extend the time for filing objections and setting a deadline for responses to any such motion. Homestead filed its MOTION TO EXTEND TIME TO FILE OBJECTIONS TO FINDINGS AND CONCLUSIONS on September 24, 1997. Therein, Homestead stated, without discussion, that its counsel had "inadvertently miscalculated the deadline for filing objections[.]" Homestead argued that the mistake constituted excusable neglect justifying an extension of time as permitted by Rule 9033(c) and as

discussed in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489 (1993).

Plaintiff-Debtors filed a response to Homestead's MOTION on September 29, 1997. They stated they would be prejudiced if Homestead was allowed to file a late objection because they would incur further costs in preparing a response and a brief and in making a court appearance and because the late response would delay the proceedings. The Plaintiff Minor Children filed a response on September 30, 1997. They argued that while Homestead had established that it was negligent, it had not established that this negligence was "excusable." Plaintiff Minor Children pointed out that Homestead had been given adequate notice of the deadline, that Homestead has already had an opportunity to fully brief the issue, and that Homestead will retain its right to a *de novo* review by the District Court even if its objection is not forwarded to the District Court. Reviewing the *Pioneer* factors, Plaintiff Minor Children stated that a late-filed objection will cause prejudicial delay because of additional time and money spent and that the delay was within Homestead's control. Plaintiff Minor Children acknowledged that Homestead's good faith is not at issue.

II.

Under F.R.Bankr.P. 9033(c), a party may request an extension of time to file objections to a Bankruptcy Court's proposed findings and conclusions on a non-core matter before the original

time expires. Otherwise, a party may request an extension not more than twenty days after the original time expires. Under this circumstance, the extension may be granted only upon a showing of "excusable neglect" by the movant.

"Excusable neglect," as contemplated by Congress, permits courts "to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer*, 113 S.Ct. at 1495. When analyzing a claim of "excusable neglect," a court must consider "all relevant circumstances surround the party's omission," including: "the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*, at 1498 (quoted in *Fink v. Union Central Life Ins. Co.*, 65 F.3d 722, 724 (8th Cir. 1995)). It is an equitable determination requiring a flexible analysis. *Pioneer*, 113 S.Ct. at 1496 and 1498; *Jones Truck Lines, Inc. v. Foster's Truck & Equipment Sales, Inc.* (In re *Jones Truck Lines, Inc.*), 63 F.3d 685, 687 (8th Cir. 1995). The party's conduct, as well as the conduct of its counsel, is considered. *Pioneer*, 113 S.Ct. at 1499.

III.

This Court is satisfied that Homestead's failure to timely file objections to the August 29, 1997 PROPOSED FINDINGS AND CONCLUSIONS

falls within the *Pioneer* definition of "excusable neglect." The length of delay was not great and will not significantly impact Plaintiffs because Homestead's concerns may still be raised with the District Court during its *de novo* review. Finally, while the delay was within Homestead's counsel's control, there is no indication that he ignored the rule or otherwise acted in bad faith.

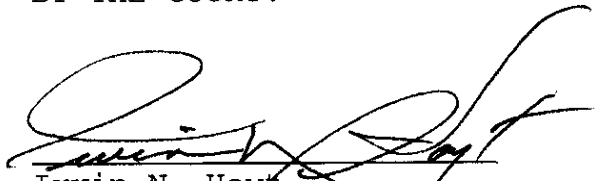
The troubling circumstance here, however, is the nature and content of the objection filed by Homestead. The objection does not fall within the parameters of Rule 9033(b). Rule 9033(b), as noted above, provides for the filing of "written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection." Homestead's RESPONSE filed September 16, 1997 goes well beyond that. The September 16, 1997 RESPONSE unnecessarily contains arguments, case law, and exhibits that are in the record. Moreover, it appears Homestead has attempted to expand the record by offering exhibits and arguments not previously presented. Objections under Rule 9033(b) are not intended for that purpose. If Homestead wants to submit additional evidence and new arguments, it may request that of the District Court rather than slipping them into its Rule 9033(b) objections. Most important, Plaintiffs would be prejudiced if they had to respond to objections that do not fall within the specifications set forth in Rule 9033(b). Accordingly, Homestead's September 16, 1997 RESPONSE will not be submitted to the

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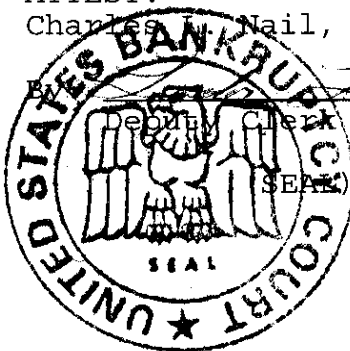
District Court under Rules 9033(b) and (c). Instead, Homestead will be given another ten days *from the date this Memorandum Decision and accompanying Order are entered and served* to file objections that meet the criteria of Rule 9033(b). Plaintiffs may then file their responses to any objections. As interpreted by this Court, Rule 9033(b) contemplates objections and responses that are short and pointed and that will aid the District Court's review of the PROPOSED FINDINGS AND CONCLUSIONS, not merely repeat earlier pleadings and add paper to the file.

Dated this 14th day of October 1997.

BY THE COURT:


Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk



NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered


OCT 14 1997

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to those creditors and other parties in interest identified on the attached service list.

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

By: 
Date: 10-14-97

Case: 97-04021 Form id: 122 Ntc Date: 10/14/97 Off: 4 Page : 1
Total notices mailed: 11

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